

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held BY MICROSOFT TEAMS on TUESDAY, 14 JANUARY 2025**

Present: Councillor Kieron Green (Chair)

Councillor John Armour	Councillor Mark Irvine
Councillor Jan Brown	Councillor Andrew Kain
Councillor Amanda Hampsey	Councillor Liz McCabe
Councillor Daniel Hampsey	Councillor Dougie Philand
Councillor Graham Hardie	Councillor Peter Wallace
Councillor Fiona Howard	

Attending: Stuart McLean, Committee Manager
Alison MacLeod, Licensing Standards Officer
David Walker, Solicitor
Malwina Kolodziejczyk, Applicant
Joanna Millar, Applicant's Solicitor
Claire Treasurer, Objector
Hugh MacLean, Objector
Myra MacLean, Objector

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Gordon Blair, Audrey Forrest and Paul Kennedy.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982, THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (LICENSING OF SHORT-TERM LETS) ORDER 2022: APPLICATION FOR GRANT OF A SHORT-TERM LET LICENCE (M AND P KOLODZIEJCZYK, FLAT 1, 10 STEVENSON STREET, OBAN)

The Chair welcomed everyone to the meeting. In line with recent legislation for Civic Government Hearings, the parties (and any representatives) were given the options for participating in the meeting today. The options available were by video call, by audio call or by written submission. For this hearing the Applicant opted to proceed by way of video call and Malwina Kolodziejczyk joined the meeting by MS Teams along with her Solicitor, Joanna Millar.

Claire Treasurer and Hugh MacLean, Objectors, also opted to proceed by way of video call and joined the meeting by MS Teams. Mr MacLean's wife, Myra MacLean, co-owner of their property, also attended by MS Teams and it was noted that she would speak on behalf of Mr MacLean.

Martin McGhie, Objector had intimated that he would be unable to attend today and he submitted a statement which he had requested be read out.

The Chair invited the Licensing Standards Officer to speak to the terms of the report.

Thereafter the procedure set out in Appendix 7 of the report was followed and the Chair invited the Applicant to speak in support for their application.

APPLICANT

Joanna Millar spoke on behalf of the Applicant. She commented that quite a number of issues raised were covered in the Officer's report. She referred in turn to each of the objections raised by Mr MacLean and said that she had noted that the issue with regard to the display of the notice had been addressed.

She also noted that there would be no issue with the keys as arrangements would be made to hand over keys in person to guests staying at the property. This would either be done by the Applicant herself, her husband, or someone else approved by her to meet guests, for example, the person who cleaned the property. She also advised that if there was an issue with an increase in utility charges this would also be addressed by the Applicant.

She referred to concerns raised about smoking in the stairwell and advised that guests would be advised that they would not be allowed to smoke in any common areas and written guidance on this would be provided. Guests would also be asked to respect the common areas eg no littering, keeping it clean and tidy, etc. She said that any accidental fire call outs would be addressed by the Applicant and information about the fire alarms would be provided in the property and explained to guests on arrival. She referred to one of the Objectors raising concerns about fire alarms going off on a daily basis and she advised that this was not something that was happening. She said that the Applicant had offered to place guidance in the bathroom in respect of keeping doors shut to avoid the steam from showers setting off the fire alarm.

Regarding the suitability of the property, she advised that there was no issue with the suitability of the property and that it was worth noting that no objections nor negative representations had been submitted from Police Scotland, Scottish Fire and Rescue Service, the Planning Department or Environmental Health and the conclusion of the report was that the property was suitable for a short-term let.

She then referred to concerns raised by Miss Treasurer about noise and commented that there appeared to be a presumption that there would be more noise from a short-term let. She said there was no basis for that. She acknowledged that there may be more comings and goings in terms of people but stated that the fact was there was no noise issue. She said the Committee had to take account of the information that was before them just now and not that a short-term let may cause more noise, and that there would need to be a specific issue within the property that could lead to more noise.

She advised that Mr McGhie had indicated that because the Applicant did not live there, there would be less care taken or investment made on the property. She advised that this was not the case. She said that the Applicant had invested time and money on the property and that it would always be kept to a high standard as guests expected everything to be perfect when they arrived. She said that in respect of short-term lets, it was her experience that the turnover of repairs were done very quickly.

She advised that the concerns raised by Objectors had been taken on board. She said that this was a small flat and that bookings for stag and hen parties would not be

accepted. She said that the property currently held long-term tenants and that it was run very well, was well managed and that this would continue.

QUESTIONS FROM OBJECTORS

Mrs MacLean asked how many street door keys would be issued to guests. She stated that it could not be guaranteed that the guests would always leave and arrive back at the property together. She voiced her concerns that if each guest did not receive a key this could lead to the buzzer on the door being used which would disturb residents. Ms Millar advised that the Applicant would ensure that enough keys were made available to guests and a view would be taken when meeting guests on arrival regarding how many keys were required. She also advised that guidance would be provided to guests regarding the door buzzer.

Mrs MacLean sought and received confirmation from Ms Millar that all the residents would receive a contact telephone number to enable them to report any issues to the Applicant. It was noted that in the first instance if an issue was reported the Applicant would contact the guests directly and if required, would attend the property. She advised that not every issue would require the immediate attendance at the property.

Mrs MacLean sought assurance that the Applicant would attend immediately to reset the fire alarm should it be set off as a result of actions by a holidaymaker. She also asked if the Applicant would ensure the automatic roof light was closed and any mess in the stair well was cleared up. Ms Millar advised necessary steps would be taken by the Applicant if the fire alarm going off was caused by a guest. She pointed out that the Applicant lived about 2 minutes away from the property.

Mrs MacLean commented that the Applicant lived more than 2 minutes away. She advised that if the fire alarm went off it had to be dealt with immediately. She referred to payments having to be made to the fire alarm company. She said she did not believe the Applicant knew about the fire alarm system. Ms Millar advised that the Applicant has confirmed to her that she would make arrangements to speak to the neighbours to find out about the fire alarm system. Information would also be provided to guests. She said again that the Applicant lived close by and that she also had others that assisted her with the management and operation of the property.

Mrs MacLean referred to the communal areas and commented that the Applicant had shown no interest to date in these areas. Ms Millar advised that if there was an increase in utility charges this would be addressed by the Applicant. She pointed out that if matters were not resolved this could be reported to the Licensing Standards Officer or Enforcement Officer.

Mrs MacLean referred to waste disposal and pointed out that there were no marked bins for each flat. She said there were only large bins behind a screened area and that any recycling had to be taken to Tesco's. She asked if the Applicant would make guests aware of this. Ms Millar confirmed that written guidance would be made available to guests and would be brought to their attention on arrival along with a number of other requirements for the building.

Mrs MacLean referred to maintenance of the communal areas and advised that the stairwell had recently been painted. She advised of concerns that walls would get marked with luggage and sought and received confirmation from Ms Millar that if there was any damage from guests this would be addressed by the Applicant.

Mrs MacLean referred to parking and stated that there was a great deal of congestion and lack of parking in the area. Ms Millar advised that she did not have an instruction from the Applicant about parking as this was not an issue raised by Objectors in their submissions. Ms Millar suggested that questions should be restricted to matters raised by the Objectors in their submissions.

Mrs MacLean sought clarification on what type of insurance the Applicant had for the property. Ms Millar said this was not an issue brought up in the original objections but she would bring it to the Applicant's attention.

Councillor Amanda Hampsey sought confirmation from Officers on the questions that could be asked. The Council's Solicitor, Mr Walker, advised that matters raised by Objectors should relate to what was in their written submissions.

Ms Millar confirmed that she was not refusing to answer questions. She confirmed that the Applicant had messaged her to say that there was on street parking which had to be paid for and further away there may be parking that did not require payment. She said that she could not confirm the status of the insurance as it was not an issue that had been brought up before but it was something she would advise the Applicant to look into in relation to the Objector's concerns.

Mrs MacLean referred to the current long-term tenant living in the flat since 2017 and commented that tenants would normally have protected rights. She suggested that if this short-term let licence was granted it would enable the eviction of a long-term tenant.

Councillor Armour sought and received confirmation from Mr Walker that the matter of a tenancy was a private matter between the tenant and landlord.

Mrs MacLean referred to legislation regarding the loss of residential accommodation to tourist accommodation. Ms Millar advised that this was a planning matter.

OBJECTORS

Claire Treasurer

Miss Treasurer referred to photographs showing the close proximity of the other flats to the proposed short-term let property and to the small shared communal landing. She advised that this was a small block of flats occupied by live in owners and long-term tenants and the common areas were part of the home of the long-term residents. She said a short-term let would be incompatible and harmful to the amenity of all the properties. She referred to disturbance due to the regular turnover of guests taking luggage in and out. She referred to congestion in the close and front door on change over days and to the risk of doors being knocked and the buzzer being pressed. She said that some of the residents worked from home. She noted that it had been stated that holidaymakers would have no need to venture further into the building. She said there would be nothing to stop them from doing so.

Regarding the proposal, she said her biggest concern was the safety and security of herself and the other long-term residents in the building. She said she was a single woman living on her own right next door to the proposed Airbnb. She advised that she has lived in her flat for 15 years, feeling safe and secure. She said that she believed she would lose this feeling if the proposal went ahead. She said she would feel uncomfortable

with the thought of people she did not know coming and going, in and out of the building with a key. She advised that she would also worry that guests would not shut the communal entrance door. She said her confidence level in them would not be the same as other trusted long-term residents.

She referred to the Applicant advising that guests would be told how to behave and be respectful and said there would be no guarantee that everyone that came would do so. She said that this was a block of flats in the town centre next to pubs. She said that people behaved differently when they had a drink and that just because they were adults did not mean they would behave or adhere to rules. She advised that noise and damage to the building or an increase in repairs requiring to be done was a concern. She said she felt she would never have a complete peace of mind. She said tourists were always a greater risk and generally less considerate of their surroundings than the people that lived there.

Myra MacLean

Mrs MacLean advised of being extremely concerned about this proposal. She advised that since the Applicant purchased the flat she had not shown any interest or made enquiries to the other residents about who was responsible for the fire alarm system and the maintenance and repairs of the building. She advised that the Applicant had shown no concern when the main door needed repair, when communal lights needed replacing, or when the sewage pipe required to be repaired. She referred to comments made by the Applicant in response to their objections that Airbnb guests would be the same as visitors to residents and said this was not true. She advised that residents would have control over who came into their property and how they behaved as they would be there living in the property and would know who their visitors were.

She advised that the building contained a number of small flats and that everyone knew one another. There was a young couple on the top floor with a baby and they required good exit facilities. She referred to congestion on changeover days. She referred to working in the holiday accommodation business in the past and said it was not easy to keep a holiday let to a high standard. She expressed her concern that guests could ruin the quality of life of the people living in the building. She referred to parking being an issue.

She asked the Committee to consider their concerns very carefully as granting this licence could ruin the quality of life of the 5 other residents. She said she believed that the Scottish Government brought in this legislation to address the very issues being talked about today. She said there was a need for more residential homes than tourist accommodation.

Martin McGhie

The Committee Manager read out the following statement from Martin McGhie, Objector:

I note the arrangements proposed by the applicant to manage security and potential disruption and the council's recommendation to approve the licence.

I remain of the view that the use of Flat 1 as a holiday let will allow the owner to maximise revenue from their property at the cost of the other residents, who consider this their home.

It appears the council have made the decision with little or no consideration to the impact of this unfair intrusion on the lives of the remaining 5 residents.

QUESTIONS FROM APPLICANT

Ms Millar confirmed she had no questions.

MEMBERS' QUESTIONS

Councillor Kain referred to page 13 of the Agenda pack which stated that a housing burden was placed on all the properties and said "each unit shall be used as a private dwelling and for no other purpose". He asked if this was true, how could this property become a short-term let. Councillor Green advised that he believed this issue had been addressed by Officers when it came up at a previous hearing. He said that this was a matter for parties to resolve separately and that they could raise a legal action on that basis and that this was not a matter for the Committee as it was not a licensing matter.

Councillor Kain referred to the additional conditions and suggested that they could be open to interpretation. He said that it was his view this was unsatisfactory for the tenants. He sought comment from the Applicant. Ms Millar said that the conditions had to be enforceable. She referred to other licensing regimes and said the Council had to ensure conditions in place were policed and enforced. She said that if there was a breach of a licensing condition this could be brought to the attention of the Licensing Standards Officer so that the matter could be investigated. She advised the conditions were worded to cover a broad spectrum of possible events.

Councillor Brown referred to the civil issue and asked if this licence was granted and a civil case was brought by the Objectors, and their complaints upheld, would this mean the licence was null and void or would another hearing be required to revoke the licence. Mr Walker advised that this was a separate issue and did not directly affect the licensing authority. In terms of today any issue regarding planning or title deeds should be placed to one side.

Councillor Brown asked the Objectors why the fire alarm was so sensitive that it was set off by a shower. She asked if this could be looked at. Miss Treasurer advised that if the bathroom door was left open the steam would trigger the alarm in the hall. She said the alarm was interlinked between the 6 flats. She said they may need to look at re positioning the alarm to stop this happening.

Councillor Howard said she was worried about the burden on the property. She asked where the Committee stood if they went against a decision already taken by the Council. She asked if the Committee would be flouting the rules. Mr Walker advised that planning had made no objection to this application.

Councillor Howard said it seemed odd to go against a decision made by the Council at another time. Councillor Green advised that it was his understanding that if there was a planning issue that would be flagged up but it would not prevent the license from being granted but could prevent the licence being used until the planning issue was resolved. Mr Walker confirmed this to be correct and said it was a separate issue.

Councillor Green sought and received confirmation from Ms Millar that the Applicant lived 1.8 miles from the premises and it took her 5 minutes to drive there from her home.

Councillor Philand referred to the additional conditions proposed and asked the Objectors what it was about these conditions they were not happy with. He asked if there were any other conditions that would satisfy their concerns. Miss Treasurer said she would feel uncomfortable with strangers constantly coming and going. She said she was a single woman living on her own and that she would find it very disconcerting to constantly hear people coming in and out and meeting different groups of people on the stairs. She said she would not know who they were or how they would behave when coming back from the pub at all hours. She said that telling them how to behave would not mean they would do so. She also referred to concerns about being disturbed by doors being knocked on and the buzzer being pressed.

Mrs MacLean said she did not believe the conditions proposed would adequately address their concerns and would not adequately protect their surroundings and the homes of all the residents. She said she did not personally live there but had a close relationship with their tenants that lived in this small haven. She said that is what a home should be and that she understood this licence regime was brought in to ensure people had this haven to come home to at night and to not worry about who was there. She said the young couple upstairs left their baby in the pram outside Miss Treasurer's door while they took shopping upstairs and said that they would no longer be able to do that. She referred to the frequent turnover of guests to an Airbnb that could accommodate up to 4 people. She said that life was too precarious now to be worrying about strangers in your own home. She said they should be entitled to feel safe whether entering their home or walking up to their front door. She said they did not know what to do to protect themselves anymore and that they were at their wits end. She referred to Miss Treasurer living next door to the property on her own. Miss Treasurer advised that she found the whole situation very stressful. She said she wanted to live in a residential block knowing her neighbours. She said this would take away the community feel and that she found it threatening.

Councillor Green sought and received confirmation from Mr Walker that this was not a planning control area and so not relevant for the purpose of today. He said that in terms of licensing, the routes that could be taken if a licence condition was breached could be by enforcement notice and revoking or suspending a licence. If a licence condition was breached the authority would be duty bound to look at the licence again.

SUMMING UP

Objectors

Claire Treasurer

Miss Treasurer said that this had been stressful for the long-term residents as it would adversely impact their amenity. The issue was sharing a small communal landing on the first floor. She said she believed this would be a short-term let too close in proximity to residents and would not be suitable as an Airbnb. She said her main concern was the security and privacy of the other residents.

Myra MacLean

Mrs MacLean said her concerns were basically the same. She urged the Committee to read the short-term let licence supplementary guidance for licensing.

Applicant

Ms Millar said that she understood the concerns of the residents but the difficulty here was that the guidance and legislation was not in place to stop short-term lets. She advised that the short-term let licence legislation was there to make sure they were in place. Planning and licensing guidance and legislation were very different and it was important to look at the licensing position and what was before everyone today. She said it was not enough to say there were concerns that there may be noise or other risks. She said the Committee were obliged to look at what was there. She advised that the report from the Council team confirmed that this was a suitable property. There were no objections from statutory consultees. There was no suggestion that the premises did not comply with fire building controls. There was no issue with the current operation of the premises. She said that the Applicant had taken all concerns raised on board and had confirmed to her in writing during the meeting that she would attend any call outs if the fire alarm was set off by guests and that she would make sure she understood how the fire alarm system operated.

She referred to concerns raised about not knowing who would be coming into the communal area and she said the same could be said for visitors to other residents e.g. handy men, cleaners etc. She said there appeared to be a generalisation about how holidaymakers would behave. She said the concerns raised were not based on what was happening now.

She advised that the Applicant met the criteria and there was no question that the property was not suitable and no question that she was not a fit and proper person. She said that planning and title matters were separate issues and not relevant today. She also said that it had been established that the Applicant lived close to the premises and would attend if there were issues. She said there have been no issues with the long-term let and no issues were expected with the short-term let.

She advised that the licence could not be refused based on what might happen. She referred to the mandatory conditions set by the Scottish Government and the additional conditions recommended in the report. She said if there were any issues if the licence was granted then action could be taken. She advised that the Applicant would provide guidance in the property for guests, she would provide her contact details to residents, she would investigate the issue with insurance, and would familiarise herself with the fire alarm system. She referred to the actions that could be taken if there was breach of a licensing condition.

She advised that it was important to keep within the guidance and legislation. She said there was no basis to refuse the licence and she moved that it should be granted.

With the exception of Mrs MacLean, the Chair established from all parties that they had received a fair hearing.

Mrs MacLean said she had not received a fair hearing as she felt she was stopped for saying all she wanted to say and this was noted.

DEBATE

Councillor Armour advised that to his mind this property should not be considered for an Airbnb but that was not why the Committee were here today. He said the Committee were here to decide whether or not this licence should be granted. He said he felt a property

like this should not be a short-term let but the Committee could not do anything about that. He said that he felt that legally everything had been done the way it should be done but morally he questioned whether the property was suitable. He advised that legally the Committee had no option but to approve.

Councillor Kain said he agreed with much of what Councillor Armour had said. He advised that he did not agree that the Committee should go ahead and grant the licence. He said that it seemed to him that the Council was going against itself. He referred to planning having a burden on the property and if the licence was granted this would go against that burden. He questioned whether there would be a potential liability within the Council and said he would like that clarified. He said that if there was, and he lived there, he would want that breach to be addressed. He said he thought there was an inconsistency with natural justice and that it was a nonsense. He advised that he would agree with Councillor Armour that this property should not be granted a licence.

Councillor Green said the Committee had already heard about how much should be taken account of in terms of planning matters. He questioned whether any decision today would influence any subsequent planning matter. He asked if this licence was granted would it clear the way for planning to be granted as well. Mr Walker advised that planning law was completely separate and was not relevant for consideration today. He advised that it would not be wise for Members to make decisions based on planning or any perceived ideas of conjecture or liability from that. He said that was out with the scope of the licensing regime.

Councillor Kain said he thought there was an inconsistency in natural justice and that the Council could be putting itself in a position of liability.

Councillor Armour referred to the housing emergency in Argyll and Bute and said that this would be perfect property that could be rented out long-term rather than as an Airbnb. He said that could not be looked at today but the Committee, as a Planning Committee, needed to look at that going forward. He referred to the photographs that Miss Treasurer presented showing how close the doors were to each other and he advised that it brought it home to him that this was not a suitable place to have a holiday let. He said he was not sure if the Committee could do anything about that today.

Councillor Amanda Hampsey said she agreed with Councillors Armour and Kain. She referred to the burden on the property and the housing emergency, pointing out that Argyll and Bute were the first to declare this in Scotland due to a lack of housing in the area. She referred to the legislation and guidance that had to be adhered to and said she could find nothing within this that would offer the Committee an opportunity to reject the application. She said she felt sorry for the Objectors that they were in this position. She said she understood that people had to make money. She said that it was a good opportunity and good business model for people in the property business to have Airbnbs, certainly in Oban, where there were many tourists. She said she would not like to live in that building if there was an Airbnb there. She advised that she could not see anything within the standards that would allow the Committee to reject this application.

Councillor Howard said she agreed with what had been said by her fellow Councillors. She questioned whether the Committee were being disingenuous ignoring the planning burden on the property. She asked if a decision on this application could be continued to get this clarified.

The Licensing Standards Officer, Ms MacLeod, advised that the application would have to be determined by 22 February 2025.

Councillor Brown said she agreed with what had been said. She commented that this issue came up time and time again and that the onus was on the Objectors to take civil action. She said these things needed to be sorted out before it got to this stage. She said she agreed with short-term lets but she advised that there was a need to ensure the Committee were doing right by everyone. She questioned whether or not the Committee would have a definite view on this from legal and planning before the next meeting.

Ms MacLeod advised that planning had not objected to the application and that she was unsure if their position would change as they would have the same information before them. She advised that the civil matter had been looked at and the position with that would not change.

Councillor Kain said he would like to put forward a Motion to continue consideration of the application in order to get a competent Motion to refuse.

Councillor Philand said he was of a similar view to Councillors Kain and Howard. He questioned what would happen if it was found at a civil court that a planning law had been broken. He noted hearing from legal that it would be competent to take a decision now. He questioned whether or not the Committee would be content knowing they could be breaching a planning law.

Councillor Howard said she thought the Committee needed to get clarification from planning on why they did not submit an objection when they had previously stated that the property was only suitable for residential use.

Councillor Daniel Hampsey said he agreed very strongly with the comments made by Councillors Howard and Philand. He said there was a need to look at the wider picture and consider how this goes forward.

Councillor Amanda Hampsey advised that in light of comments made she would be open to considering a continuation of consideration of this application.

Councillor Green said his own opinion was based on the information provided today. He referred to the policy in place regarding short-term lets and how the Committee had dealt with previous applications. He said he did not think there was anything in front of the Committee today that would support not granting the licence. He advised that he could not say he supported changing the property from a long-term let to a short-term let. He advised that based on the policy the Committee had, and the way the Committee have chosen to apply that, he said he did not think, from the information before them today, that the application could be refused and so, on that basis, he would be in favour of granting the licence.

Motion

To agree to grant a short-term let licence.

Moved by Councillor Kieron Green, seconded by Councillor Mark Irvine.

Amendment

To agree to continue consideration of this application to a future meeting prior to 22 February 2025 to allow Members to seek advice on the preparation of a competent Motion to refuse the application.

Moved by Councillor Andrew Kain, seconded by Councillor Graham Hardie.

A vote was taken by calling the roll.

<u>Motion</u>	<u>Amendment</u>
Councillor Green	Councillor Armour
Councillor Irvine	Councillor Brown
	Councillor A Hampsey
	Councillor D Hampsey
	Councillor Hardie
	Councillor Howard
	Councillor Kain
	Councillor McCabe
	Councillor Philand
	Councillor Wallace

The Amendment was carried by 10 votes to 2 and the Committee resolved accordingly.

DECISION

The Committee agreed to continue consideration of this application to a future meeting prior to 22 February 2025 to allow Members to seek advice on the preparation of a competent Motion to refuse the application.

(Reference: Report by Regulatory Services and Building Standards Manager, submitted)